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CALFED Bay-Delta Program

August 8, 2000

David Hayes
Deputy Secretary
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Re: **Central Valley Project Contracts and CALFED Decision-Making**

Dear Mr. Hayes:

We are writing regarding the relationship between Central Valley Project (CVP) long-term contract negotiations and CALFED decision-making, particularly regarding any potential relaxation of Delta pumping limits, new water-storage facilities, and the financing that would be necessary for such facilities. CALFED is now a few short weeks from issuing a final record of decision. Simultaneously, the Department of the Interior is negotiating renewed water-services contracts with CVP contractors. We are deeply concerned that Interior is adopting inconsistent positions in these two discussions and that the current Interior proposal for new CVP contracts would severely hamper Interior's ability to implement meaningful changes through the CALFED program.

You are aware of our concerns regarding Interior's proposal for renewed CVP contracts. Two of our primary concerns are Interior's proposals to leave the quantities of water specified in these contracts unchanged, even where those quantities seriously overstate the reliable water supply available for a contractor, and to effectively eliminate from the contracts the statutorily required tiered pricing in many circumstances. Both of these decisions could, if reflected in final contracts, have a profound negative impact on CALFED decision-making.

Interior's draft CVP contract would create tremendous pressure for new storage and Delta diversions to provide yield. Interior currently proposes to sign renewed CVP contracts without reducing contract amounts to reflect the actual ability of the project to deliver water. If signed, this contract would allocate to many CVP contractors a quantity of water that the project, given current facilities and requirements, could not deliver in all but the most unusual circumstances. Such a contractual commitment would be misleading and unwise. It would also have a clear, negative impact on CALFED decision-making.

CALFED has always acknowledged the need to manage the Central Valley water supply system differently. For example, the June 9 framework states that the program will result in "more strategically managed storage." CALFED decision-makers have clearly stated that new storage could be used for

purposes other than new yield, such as the Environmental Water Account (to address Delta issues), upstream ecosystem restoration flows and urban water quality benefits. However, the framework also indicates that many major decisions, particularly regarding the purpose and operations of proposed new storage facilities, have not yet been made. (Many of our organizations have urged you to provide greater detail regarding project purpose and operations.) Decision-making is at a similar point regarding proposed increases in Delta pumping limits.

We are greatly concerned that the terms of Interior's draft CVP long-term renewal contract would severely prejudice the outcome of the CALFED debate regarding the purpose and operation of proposed new storage and proposed relaxation of Delta pumping limits. If Interior were to sign renewed contracts based on the current Interior draft, with the unrealistically large water-quantity allocations reflected in the current draft, that act would create enormous pressure to dedicate any new Delta pumping or surface storage to increased water yield, in order to "deliver" on the water-allocation "promises" made in the contracts. For the past several years, the environmental community has asked for additional detail and assurances regarding new storage and Delta diversions. The proposed Interior contract has heightened our concern in this regard and raised the very clear inference that any new surface-storage facilities would be used to increase the amount of water taken from the environment and diverted to heavily subsidized water users.

The most recent example of problems created by unrealistic contract quantities is contained in the attached article, in which Westlands attempts to justify its recent attack on the San Joaquin River on the grounds that the Bureau of Reclamation has "consistently failed to meet its contractual obligation of delivering 1.15 million acre feet to the district."

Interior's draft contract would prejudice CALFED decision-making regarding the financing of new facilities. Interior has proposed a pricing structure in the draft contract that would effectively eliminate tiered pricing in most circumstances, despite the plain requirement for effective tiered pricing contained in the Central Valley Project Improvement Act (CVPIA). This contract would, if signed, perpetuate enormous and inappropriate subsidies by continuing to deliver water at far below market value. Meanwhile, CALFED has proposed that financing of new surface storage facilities would be based on the "beneficiary pays" principle. CALFED has not, however, defined this principle, even in the broadest terms.

The terms of the draft CVP contract clearly would not meet the requirements of a meaningful beneficiary pays financing program. The draft contract appears to suggest a position very different from that in the framework. If Interior signs contracts based on its current draft, how would Interior require CVP contractors to comply with meaningful "beneficiary pays" financing requirements for new storage constructed under the CALFED program, given the large quantities and low prices specified in the draft contract?

The interplay between contract volume and pricing would further worsen the problems the proposed contract would create for CALFED. For example, even if a significant amount of water from proposed new facilities were to be dedicated to CVP contractors, it would be unlikely that the full proposed contract volumes would be delivered. It would be extremely difficult to develop a meaningful "beneficiary pays" financing strategy for new facilities when total CVP deliveries would likely remain below renewed contract totals.

If Interior signs contracts based on its current draft, CVP contractors are certain to claim in the CALFED process that these contracts lay out Interior's position regarding the need for additional Delta pumping and storage, the need for that storage to be operated to increase yield significantly, and how that storage

should be financed. Such a situation would be unfair, prejudicial to the CALFED process, and deeply unacceptable from a policy standpoint.

We strongly urge Interior to improve the terms of the draft contract and to clarify the CALFED record of decision to provide greater detail regarding financing, project purpose and proposed operations. Given the short timeline prior to final decisions regarding CALFED, we would greatly appreciate a timely response to the concerns expressed above. Thank you.

Sincerely,



Barry Nelson
Natural Resources Defense Council

Dan Sullivan
Sierra Club

Gary Bobker
The Bay Institute of San Francisco

Fran Spivy Weber
Mono Lake Committee

Betsy Reifsnider
Friends of the River

Arthur Feinstein
Golden Gate Audubon Society

John Steere
San Francisco Bay Joint Venture

Cynthia Koehler
Save San Francisco Bay Association

Richard Izmirian
California Sportfishing Protection Alliance

Nick Di Croce
California Trout

Betsy Reifsnider
Friends of the River

cc: Senator Dianne Feinstein
Senator Barbara Boxer
Congressman Miller
Senator John Burton
Senator Byron Sher
Lester Snow
Felicia Marcus
Mary Nichols
Mike Spear
David Nawi